

# FRIEDMAN & FEIGER

ATTORNEYS AT LAW

## A New Year-Time To Update Your Estate Plan



The beginning of a new year provides an ideal opportunity for a review of your estate planning documents—Last Will and Testament, Living (revocable) Trust, Living Will, Powers of Attorney and more—to make certain the provisions of these documents meet the estate planning goals for you and your family. So what exactly should someone be considering when it comes to an evaluation of estate planning documents.

1. **Marriage or Divorce.** Did you, your child or another family member named in your estate planning documents get married or divorced warranting a change to your estate plan?
2. **New People Should Be Included.** Did you, your child or someone else give birth or adopt a child you want to include in your estate planning documents? Do you want to add or remove any people from your estate plan?
3. **Change in Executors, Trustees, Personal Representatives and Guardians.** Has there been a change in circumstances with respect to any of the key roles held by executors, trustees, personal representatives or guardians due to death, illness, or any other reason that necessitates making a change to your estate planning documents?
4. **Children Reach Age of Majority.** Has a child named in your estate planning documents turned 18 or otherwise reached a milestone set in your estate planning documents that requires making a change to your estate plan?
5. **Substantial Increase or Decrease in the Value of Your Estate.** Does a change in the value of your estate warrant a change in your estate plan?
6. **Acquisition or Disposition of a Significant Asset.** Have you purchased or sold a home or opened or closed a business? If so, have those assets been transferred to your Living Trust?
7. **Pension Plans, IRAs or 401(k)s.** Does your qualified plan, IRA or 401(k) require an adjustment of beneficiaries in your estate plan? Have you reached the age at which you are required to take distributions under your pension plan, IRA, 401(k), or other qualified plan?
8. **Insurance.** Does your life insurance policy still cover the amount that would be necessary to support your family in the event of your death? Does your life insurance policy require any change of beneficiaries?
9. **Think About Your Asset Distribution in Your Living Trust.** Does your Living Trust reflect the manner in which you would like to distribute your wealth when you die to your spouse, children, grandchildren, or others?

Friedman & Feiger is prepared to counsel its clients on how best to effectuate their particular estate planning goals and objectives. Please call me at 972-450-7350 or mail me at [rfeiger@flawoffice.com](mailto:rfeiger@flawoffice.com). Additionally, turn to Page 3 for information on the Window of Opportunity for Gift Giving.

*Robert E. Feiger*

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## In The Spotlight: Carlos Morales



### Premarital Agreements

Premarital Agreements are governed by Texas Family Code §§ 4.001-4.010. A premarital agreement is defined as “an agreement between prospective spouses made in contemplation of marriage and to be effective on marriage.” TEX. FAM. CODE §4.001(1). A premarital agreement, to be enforceable, must be in writing, signed by both parties and will not fail for want of consideration. TEX. FAM. CODE §4.002. The party contesting the enforceability of the premarital agreement has the burden of proving its unenforceability. TEX. FAM. CODE §4.006. To prove that a premarital agreement is unenforceable, a party must prove either:

- (1) The party did not sign the agreement voluntarily; or,
- (2) The agreement was unconscionable when it was signed and, before signing the agreement, that party:
  - A) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;
  - B) did not voluntarily and expressly waive, in writing, any right to disclosure of the party or financial obligations of the other party beyond the disclosure provided; and,
  - C) did not have, or reasonably could not have had, adequate knowledge of the property or financial obligations of the other party.

TEX. FAM. CODE §4.006(a). Further, these defenses are the exclusive remedies or defenses a party can use to combat the enforceability of a premarital agreement. TEX. FAM. CODE §4.006(c).

One way to protect against the harm from a premarital agreement being deemed unenforceable, is to keep proper records and accounting of separate property from the date of marriage until the divorce decree is entered. It is also important to keep separate property separate from what could be considered community property. If separate property is important enough to protect by entering into a premarital agreement, it is important enough to take necessary steps to make it easier to identify and account for just in case the premarital agreement is deemed unenforceable.

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## Wait ... You Want Me To Pay Back What?! By Matt Muckleroy

Maybe it happened to you or your company. Maybe it happened to your neighbor or colleague. Perhaps you never even knew it could legally happen to anyone. But nobody enjoys receiving a demand letter.

I am not talking about a letter demanding payment of a loan. I am talking about a letter demanding payment of money you received, as valuable consideration, for the business transaction you just completed with the company up the street—and, that company recently filed for bankruptcy protection. Wait—what?

In a time when unemployment hovers around 8-9%, the thought of bankruptcy creeps more and more into our collective psyche. Should I personally file for protection under Chapter 13 of the Bankruptcy Code? Should I put my business in bankruptcy under Chapter 11? How are you affected when *others* file for bankruptcy protection—particularly, if you find yourself doing business with those entities from time to time?

Section 547(b) of the Bankruptcy Code allows a bankruptcy trustee to avoid certain transfers of money made by a debtor, when the transfer was made within ninety (90) days of the date the debtor filed for bankruptcy. 11 U.S.C. § 547(b). These payments or “preferential transfers” are treated, as such, so that the creditor that received its payment on the eve of bankruptcy filing is placed on equal footing with the creditor that still holds a receivable the minute after the bankruptcy petition is filed. The Bankruptcy Code does not want the debtor to play favorites with its creditors in that way.

Fortunately, for those of us that receive that dreaded letter from the bankruptcy trustee, the Bankruptcy Code provides for several exceptions to the general rule. Section 547(c) of the Bankruptcy Code provides that a trustee may not avoid a transfer if that transfer could be considered a contemporaneous exchange for new value. Further, a trustee may not avoid a transfer if the debtor incurred such debt in the ordinary course of business or financial affairs. Several other exceptions also exist, but each exception is very fact specific. Without proper counsel, an individual or business could easily slip up and repay more money than necessary. Please contact one of our professionals if you or someone you know falls into this category, and let us help you keep your hard earned money in your pocket!

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## Keep Your Trade Secrets Secret **By Carter Boisvert**

Trade secrets are invaluable assets and have a tremendous effect on the continued success of some business. So it goes without saying that, for some businesses, protecting such assets is crucial. In order to do so, you must understand what your trade secrets are and then how best to protect them.

Although many states have adopted the Uniform Trade Secrets Act to govern trade secret claims, Texas is one of a handful of states that does not have a statute governing trade secrets law. However, Texas common law does create civil liability for misappropriating someone's trade secrets and criminal penalties may be imposed in some cases.

In Texas, a trade secret is defined as a "formula, process, device, or compilation which one uses in his business and which gives him an opportunity to obtain an advantage over competitors who do not know or use it." Naturally, to have "trade secret" status, the information sought to be protected cannot be generally known or ascertainable through legal methods. The information must provide an economic value or a competitive advantage and the company must take reasonable steps to protect the information. Trade secrets cover assets like customer lists, business plans, sales data, pricing information, product design specifications, and computer code.

Ways to protect your trade secrets include first determining what your trade secrets are and then estab-

lishing clear policies for how the company will protect its trade secrets. Ensure that your employees comply with those policies and employ the heavy use non-disclosure and confidentiality agreements, limit access to the confidential information, remind employees what information is confidential and why it should be protected, mark the information "confidential", and enforce the return of confidential information by terminated employees. Protecting trade secrets becomes even more complicated and risky considering today's technology (e.g., cloud computing), where one must consider that sensitive trade secret information may potentially be stored on someone else's databases or applications.

Misappropriation of a trade secret occurs when one uses or discloses a trade secret that was obtained through a relationship of trust (like employment), through fraud, theft, or other improper means. If someone has misappropriated your trade secrets, Texas courts may, in addition to awarding damages, order injunctive relief to prevent any continued violations and publication of the information and preserve the information's secrecy.

If you own valuable trade secrets, employing proper procedure and policies - or enforcing your rights in court if necessary - to protect that information is essential.



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## Window of Opportunity for Gift Giving **by Robert Feiger**

The federal gift tax has two "exclusions" or "exemptions" associated with it, one that applies on an annual basis and one that applies over the taxpayer's entire lifetime. The former is commonly referred to as the "annual gift tax exclusion" and the latter is commonly referred to as the "lifetime gift tax exemption".

The **annual gift tax exclusion** is the amount that can be given away by a taxpayer in any one year to any number of people free from any federal gift tax consequences at all. For **2012**, the annual gift tax exclusion is **\$13,000**. Married couples can combine their annual exclusion gifts and gift up to **\$26,000** per person, per year.

In contrast, the **lifetime gift tax exemption** is the amount that can be given away by a taxpayer over his or her entire lifetime to any number of people that will be free from gift taxes but will reduce the amount that can be given away by the taxpayer tax free after death. In other words, the lifetime gift tax exemption is tied directly to the federal estate tax exemption such that if you gift away any amount of your lifetime gift tax exemption, then this amount will be subtracted from your estate tax exemption after you die.

In 2010, the lifetime gift tax exemption was capped at \$1,000,000 with a top tax rate of 35%. Under the current tax law the lifetime gift tax exemption has increased to **\$5,120,000** in **2012** with a top tax rate of 35%. These numbers, however, will only be in effect until the end of 2012. In 2013, the lifetime gift tax exemption is scheduled to decrease back to \$1,000,000 and the top gift tax rate will jump to 55%.

Thus, this window of opportunity for the gifting of one's assets should be given careful consideration. Friedman & Feiger is prepared to counsel our clients on how best to plan for the utilization of this lifetime gift tax exemption. Please call me at 972-450-7350 or email me at [rfeiger@fllawoffice.com](mailto:rfeiger@fllawoffice.com).

## FRIEDMAN & FEIGER FOUNDATION RAISES OVER \$600,000 FOR CHILDREN'S MEDICAL CENTER AT "KIDS JUST WANNA HAVE FUN" GALA JANELLE & LARRY FRIEDMAN, CO-CHAIRS

The Friedman & Feiger Foundation raised over \$600,000 for Children's Medical Center at the firm's annual holiday children's benefit, "Kids Just Wanna Have Fun" gala, which featured a live performance by Grammy-Award Winning Cyndi Lauper.

Held at the Fairmont Hotel's Regency Ballroom, the classy, luxurious evening included a silent auction of paintings by Children's Medical Center patients, seated gourmet dinner, children's performances, and the Rodney Anderson/Supreme Lending "Pot of Gold" game.

Janelle and Larry Friedman honored Molly and Gregg Engles for their commitment and donations of over \$2.5 million to Children's Medical Center.

Title sponsors for the "Kids Just Wanna Have Fun" gala were Erin and Andrew Hillman, Semyon Narosov, Texas Capital Bank and Friedman & Feiger, Attorneys At Law.

We thank everyone who made the evening a success and joined our efforts to provide a better life for children with medical needs.



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## Upcoming Events

### Friedman & Feiger Calendar

**January 29, 2012** Honorary Chairs Janelle and Larry Friedman and Friedman & Feiger present "The Wizard Of Paws" benefitting the SPCA of Texas Clinic at Village Fair. For tickets: [jfriedman@fllawoffice.com](mailto:jfriedman@fllawoffice.com)

**February 2, 2012** Friedman & Feiger sponsors the Dallas Hispanic Bar Association Social - Sfuzzi 5:30-7:30

**March 1, 2012** Janelle Friedman hosts Essential Energy Business Networking Reception for Women Business Leaders, featuring nationally-recognized speaker Kristin Kaufman, *Is This Seat Taken?* If you would like to attend, please RSVP to [jfriedman@fllawoffice.com](mailto:jfriedman@fllawoffice.com)

**April 5, 2012** Janelle Friedman hosts Essential Energy Business Networking Reception for Women Business Leaders, featuring WFAA anchorwoman Gloria Campos. If you would like to attend, please RSVP to [jfriedman@fllawoffice.com](mailto:jfriedman@fllawoffice.com)

**May 3, 2012** Janelle Friedman hosts Essential Energy Business Networking Reception for Women Business Leaders, featuring nationally-recognized speaker Craig Krause, *"Mastering Your Memory."* If you would like to attend, please RSVP to [jfriedman@fllawoffice.com](mailto:jfriedman@fllawoffice.com)

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